

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 3045
(CTA Case No. 10797)

Present:

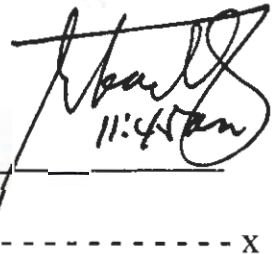
RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, and
CENTENO-DIJAMCO JJ.

- versus -

SIEMENS
AKTIENGESELLSCHAFT,
Respondent.

Promulgated:

SEP 03 2026



X-----X

DECISION

FERRER-FLORES, J.:

Before Us is a **Petition for Review**¹ filed on January 3, 2025 by the **Commissioner of Internal Revenue (CIR)** assailing the Decision dated April 24, 2024² (assailed Decision) and Resolution dated November 12, 2024³ (assailed Resolution) of the Court's Special Second Division (Court in Division) in the case entitled *Siemens Aktiengesellschaft vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 10797. The dispositive portions of the assailed Decision and Resolution read as follows:

Assailed Decision

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner [herein respondent] Siemens Aktiengesellschaft

¹ *Rollo*, pp. 8-13.

² *Id.* at 17-39; Penned by Associate Justice Jean Marie A. Bacorro-Villena and concurred in by Associate Justice Lancee S. Cui-David.

³ *Id.* at 46-52.

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on 02 March 2022, is hereby **GRANTED**. Accordingly, respondent [herein petitioner] Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner [herein respondent] Siemens Aktiengesellschaft in the total amount of **₱41,456,894.68**, representing the erroneously paid CGT.

SO ORDERED.

Assailed Resolution

WHEREFORE, in view of the foregoing, respondent's [herein petitioner's] Motion for Reconsideration, filed on 15 May 2024, is hereby **DENIED** for lack of merit and for being *pro forma*.

SO ORDERED.

THE PARTIES

Petitioner is the duly appointed CIR, who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties and fines connected therewith, with authority, among others, to decide, approve and grant tax credits and/or refunds of erroneously paid Capital Gains Tax (CGT). He may be served with summons, legal processes, orders and resolutions at Bureau of Internal Revenue (BIR) Legal Division-RR7A, Room 516, 5th Floor Roof Deck, Fishermall, Quezon Avenue corner Fernando Poe Jr. Avenue, Quezon City.⁴

Respondent **Siemens Aktiengesellschaft** is a corporation organized and existing under the laws of Germany with its registered seat in Berlin and Munich, Germany. It may be served with notices and other court processes through its counsel, Platon Martinez Flores San Pedro and Leaño Law Offices with address at 6/F Tuscan Building, 114 V.A. Rufino Street, Legaspi Village, Makati City, Metro Manila.

FACTUAL ANTECEDENTS

The factual antecedents as narrated in the assailed Decision are as follows:⁵

[Siemens Power Operations, Inc.] SPO is a corporation organized and existing under Philippine laws, with a principal office address at Sta. Rita and San Lorenzo Power Station, Sta. Rita, Batangas City. [Respondent] was the legal and beneficial owner of 100% of the total shareholdings of SPO, equivalent to 5,254 common shares (5,249 of which are registered under [respondent's] name, and five [5] were held in trust by

⁴ II. Parties, Petition for Review, *Rollo* p.8.

⁵ *Rollo*, pp. 35-41.

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the nominal shareholders) out of SPO's authorized capital stock of 20,000 common shares.

By virtue of the notarized Share Transfer Agreement dated 03 February 2020, [respondent] transferred its 5,254 common shares in SPO to Siemens Gas and Power GmbH & Co. KG (**Siemens GmbH**), for a fair market value (**FMV**) consideration of **₱419,872,946.83**, in exchange for the latter's original issuance of its shares of stock ("**transaction**").

Thereafter, on 02 March 2020, [respondent] filed its CGT Return (BIR Form No. 1707) and paid the CGT in the amount of **₱41,456,894.68** on the subject transaction. On even date, [respondent] also filed its Documentary Stamp Tax (**DST**) Return (BIR Form No. 2000-OT) and paid the DST amounting to **₱39,405.00**.

The BIR then issued to [respondent] a Certificate Authorizing Registration (**CAR**) No. eCP201300185079 (eCAR No: C-2020-039-059717-M) dated 17 June 2020, thereby validating the payment of CGT and DST on the subject transaction and legalizing the transfer of SPO shares from [respondent] to Siemens GmbH, ensuring compliance with tax laws and facilitating the proper documentation and registration of such transfer.

On 29 December 2021, [respondent] filed a Tax Treaty Relief Application (**TTRA**) for exemption from CGT, along with supporting documents, including BIR Form No. 0901-C, with the BIR's Litigation Division (albeit addressed to the Chief of the International Tax Affairs Division [**ITAD**]), requesting official confirmation that the sale or transfer of its shares in SPO to Siemens GmbH is exempt from CGT, pursuant to the [Republic of the Philippines and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital] RP-Germany Tax Treaty.

On 27 January 2022, [respondent] filed with the BIR an Application for Tax Credits/Refund (BIR Form No. 1914) to recover the alleged erroneously paid CGT amounting to **₱41,456,894.68** on the subject transaction.

Subsequently, on 11 February 2022, [respondent] filed with the BIR a Supplemental TTRA of even date, including a copy of SPO's Interim Financial Statements (**FS**) as of 31 January 2020. On the same day, [respondent] also filed a Supplemental Application (related to its administrative claim for refund) with the BIR's Revenue District Office (**RDO**) No. 39-South Quezon City. [Respondent] therein requested the said RDO's confirmation that the sale or transfer of [respondent's] shares in SPO to Siemens GmbH is exempt from CGT under the RP-Germany Tax Treaty, and that it is entitled to a refund of the CGT paid therefor.

PROCEEDINGS BEFORE THE COURT

With [petitioner's] inaction on its administrative claim for refund and to toll the two (2)-year prescriptive period under Section 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, [respondent] elevated the matter to this Court by filing the instant Petition for Review on 02 March 2022. The same was raffled to the Second Division and docketed as CTA Case No. 10797.

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On 07 March 2022, the Court issued Summons ordering [petitioner] to file an Answer within thirty (30) days from service. [Petitioner] received the said Summons on 10 March 2022.

After the Second Division granted an extension of time to respondent, the Answer was filed on 10 May 2022. There, [petitioner] cited the following special and affirmative defenses: (1) taxes collected are presumed to be in accordance with laws and regulations; (2) [respondent's] alleged refund claim is subject to the BIR's routine administrative investigation and is not *ipso facto* granted, as [petitioner] must still investigate and ascertain the claim's validity; (3) before a taxpayer can credit excess payment to the succeeding taxable year and/or be granted a tax refund/credit, as the case may be, there is a need of investigation as a matter of procedure to enable the CIR to determine and/or ascertain the correctness of the corporate returns and the amount to be credited, if any; (4) since the administrative refund claim (for the alleged CGT erroneously paid on 02 March 2020) was filed only on 11 February 2022, [respondent's] claim is still subject to administrative investigation by the BIR to determine the propriety of issuing a tax credit certificate (TCC); (5) taxation cannot easily be surrendered, and since statutes granting tax exemptions are considered a derogation of sovereign authority and refunds are in the nature of such exemptions leading to government revenue loss, there must be a categorical and express legal provision allowing tax refunds, or else they should not be permitted; (6) since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption; and, (7) [respondent] bears the burden of proving that the right to such a tax refund indubitably exists, and any well-founded doubt is fatal to the claim.

On 18 May 2022, [petitioner] forwarded to the Second Division the entire BIR Records of the present case consisting of 129 pages in one (1) folder. The Second Division noted the same in the Minute Resolution dated 24 May 2022.

On 19 May 2022, the Second Division issued a Notice of Pre-Trial Conference and set the case for pre-trial on 08 August 2022. In compliance with the Court's order, [petitioner] filed his or her Pre-Trial Brief on 02 August 2022, while [respondent] filed its Pre-Trial Brief on 04 August 2022.

During the 08 August 2022 Pre-Trial Conference, the Second Division granted both parties 30 days, or until 07 September 2022, within which to file their Joint Stipulation of Facts and Issues (JSFI). On 07 September 2022, the parties submitted their JSFI.

In the Resolution dated 21 September 2022, the Second Division admitted and approved the parties' JSFI, deemed terminated the pre-trial and set the initial presentation of [respondent's] evidence on 17 November 2022.

On 17 October 2022, the Second Division issued a Pre-Trial Order approving the parties' JSFI and terminating the pre-trial.

In the trial that ensued, [respondent] presented its testimonial and documentary evidence. It offered the testimonies of the following

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witnesses: (1) Alicia C. Argente (**Argente**), SPO's Finance & Accounting Manager; and, (2) Atty. Francis H. Tuliao (**Atty. Tuliao**), legal counsel of Siemens, Inc.

During the 17 November 2022 hearing, Argente identified her Judicial Affidavit dated 01 March 2022 where she declared essentially that: (1) she is SPO's Finance & Accounting Manager and has been employed with SPO since 24 February 1999; (2) as the Finance & Accounting Manager, her responsibilities include overseeing the preparation of SPO's financial statements to ensure their accuracy and timely presentation, certifying financial information and data related to SPO's assets and liabilities, and maintaining custody of SPO's financial records; (3) SPO is a corporation organized and existing under Philippine laws; (4) SPO's Audited Financial Statements (**AFS**) as of 30 September 2019 shows that its Property and Equipment amount to €1,032,350 while its total assets amount to €360,634,626; (5) SPO's Interim FS as of 30 January 2020 shows that its Property and Equipment amount to €904,070 while its total assets amount to €374,648,371; and, (6) SPO's real property interest in the Philippines does not comprise more than 50% of its total assets.

[Petitioner] did not conduct any cross-examination.

Next to testify during the 17 November 2022 hearing was Atty. Tuliao, who identified his Judicial Affidavit dated 01 March 2022 where he declared that: (1) he is the legal counsel of Siemens, Inc. since 10 August 2015; (2) as legal counsel, his functions include the management of potential legal risk across the business, ensuring compliance with legal requirements of company transactions, supervision over corporate filings with government agencies, and coordination with external legal counsel; (3) he is testifying as petitioner's attorney-in-fact tasked to, among others, file and process its application for administrative and judicial claims for refund and for tax treaty relief under the RP-Germany Tax Treaty; (4) [respondent] is an entity incorporated and residing in Germany, it is not registered either as a corporation or a partnership nor has it been issued a license to do business in the Philippines; (5) [respondent] previously held 100% of SPO's total outstanding capital stock, equivalent to 5,254 common shares; (6) SPO is a corporation organized and existing under Philippine laws, with principal office address at Sta. Rita and San Lorenzo Power Station, Sta. Rita, Batangas City, Philippines; (7) SPO is principally engaged in the business of operating, maintaining, testing, commissioning, servicing (including user-training) and repairing power plants and all other infrastructures for or related to the generation of electric power; (8) as evidenced by the Share Transfer Agreement dated 03 February 2020, [respondent] sold and transferred to Siemens GmbH all its right, title, and interests in and to the 5,254 common shares in SPO, for a purchase price of ₱419,872,946.83; (9) [respondent] is a corporation organized and existing under the laws of Germany with its registered seat in Berlin and Munich, Germany and principal place of business in Witte[]sbacherplatz 2 803125 Munich, Germany; (10) on 02 March 2020, [respondent] filed its DST return and paid DST in the amount of ₱39,405.00; (11) on 02 March 2020, [respondent] timely filed its CGT and paid CGT amounting to ₱41,456,894.68; (12) on 17 June 2020, [respondent] secured the CAR and tax clearance on the subject transaction; (13) on 29 December 2021, [respondent] filed a TTRA with the BIR's ITAD to request confirmation that the subject transaction is exempt from CGT under the RP-Germany Tax



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Treaty, and on 11 February 2022, a Supplemental TTRA; (14) on 27 January 2022, [respondent] filed with the BIR an Application for Tax Credits/Refund (BIR Form No. 1914) to recover the erroneously paid CGT amounting to ₱41,456,894.68, and on 11 February 2022, a Supplemental Application; and, (15) since [petitioner] failed to act on [respondent's] administrative claim, [respondent] was constrained to file the present Petition for Review to toll the two (2)-year prescriptive period under Section 229 of the NIRC of 1997, as amended.

During cross-examination, Atty. Tuliao confirmed that the CGT Return, filed on 02 March 2020, and the Security Bank BTR-BIR Deposit Slip of even date are the proofs of payment of the CGT on the subject transaction. He also answered affirmatively when asked whether [respondent] filed the TTRA only on 11 February 2022 (as mentioned in Question No. 33 of his Judicial Affidavit), and whether [respondent] filed the Application for Tax Credits/Refund (BIR Form No. 1914) earlier on 27 January 2022 (as mentioned in Question No. 28 of his Judicial Affidavit).

[Respondent] did not conduct any redirect examination.

On 19 December 2022, after completing the presentation of its testimonial evidence, [respondent] filed its "Formal Offer of Evidence with Urgent Motion to Set Case for a Commissioner's Hearing" (**FOE with Urgent Motion**) consisting of Exhibits "P-1" to "P-25", inclusive of sub-markings. [Respondent] requested a Commissioner's Hearing to compare the originals of Exhibits "P-4", "P-11", "P-18" and "P-21" and to transfer the marking of Exhibit "P-13" from BIR Form No. 1914 to the Cover Letter dated 27 January 2022, which was addressed to and stamped as received by RDO No. 39-South Quezon City. [Petitioner] filed his or her Comment/Opposition thereto on 03 January 2023.

xxx xxx xxx

In the Resolution dated 07 March 2023, the Second Division admitted all the exhibits in [respondent's] FOE, and noted its Manifestation and Compliance. However, the Second Division denied [respondent's] prayer to transfer the marking of Exhibit "P-13" from BIR Form No. 1914 to the original Cover Letter dated 27 January 2022 addressed to and stamped as received by RDO No. 39-South Quezon City, for its failure to transfer the said marking during the scheduled Commissioner's Hearing, and to submit the original copy of the Cover Letter dated 27 January 2022 in its Manifestation and Compliance. Accordingly, the document described as Application for Tax Credits/Refund (BIR Form No. 1914) remained marked as Exhibit "P-13," in accordance with the document offered in the FOE and identified in the Judicial Affidavit of Atty. Tuliao. In the same Resolution, the Second Division gave the parties a period of 30 days within which to submit their respective memoranda.

On 11 April 2023, [respondent] filed its Memorandum. [Petitioner], on the other hand, filed his or her Memorandum on 12 April 2023. Accordingly, on 25 April 2023, the Second Division considered the case submitted for decision.

by

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The Court in Division held that respondent was able to prove its erroneous payment of the CGT on the sale of shares of stock in Siemens Power Operations Inc. to Siemens Gas and Power GmbH & Co. KG. The Court in Division found that respondent is exempt from paying the CGT from the sale pursuant to the Agreement between the Republic of the Philippines and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital (RP-Germany Tax Treaty).

On May 15, 2024, petitioner filed a *Motion for Reconsideration* before the Court in Division. As mentioned above, the same was denied for lack of merit and for being *pro forma*.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Undeterred, petitioner filed the present *Petition for Review* on January 3, 2025.⁶

Respondent filed his *Comment (To: Petition for Review filed by Commissioner of Internal Revenue dated 03 January 2025)* on July 7, 2025.⁷

On September 17, 2025, the Court *En Banc* noted respondent's *Comment* and submitted the case for decision.⁸

Petitioner failed to specify any assigned error or issue in the present *Petition for Review*. He prays for the assailed Decision and Resolution be reversed and set aside, and another one be rendered denying the *Petition for Review* filed before the Court in Division involving respondent's claim for refund in the amount of ₱41,456,894.68 representing capital gains tax from the sale of its shares of stock to Siemens Power Operations, Inc.

PARTIES' ARGUMENTS

In his bid to have the assailed Decision and Resolution reversed and set aside, petitioner claims that the best proof of residency is the tax resident certificate duly issued by the competent authority of the treaty partner, and failure to submit the same would result in the denial of the nonresident's claim. While respondent filed a Tax Residency Certificate (TRC), the same is not admissible as it does not comply with Section 24, Rule 132 of the Rules of Court. For petitioner, if the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation,

⁶ *Supra* at note 1.

⁷ *Rollo*, pp. 68-81.

⁸ *Id.* at 83.

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consul-general, consul, vice-consul or consular agent or by any officer in the foreign service of the Philippines stationed in a foreign country in which the record is kept, and authenticated by the seal of his office.

Accordingly, Atty. Francis H. Tuliao, the legal counsel of Siemens, Inc., is not competent to testify as to the due execution of the TRC. Further, all documents executed in a foreign country must either be authenticated by the Philippine Embassy stationed therein or apostilled if the said foreign country is a signatory to the Convention Abolishing the Requirement of Legislation for Foreign Public Documents (HCCH 1961 Apostille Convention) to be acceptable in the Philippines.

In its *Comment*, respondent counters that the TRC is *prima facie* evidence of the facts stated therein. The TRC was issued by the Tax Office of Munich, and bears a signature stamp and seal of the issuing authority. It attests that Siemens AG is registered with the Financial Authorities in Munich under a given tax number.

Respondent contends that petitioner's ground in discrediting the TRC applies to documents originating from a foreign country which is not a contracting party to a treaty or convention. It stresses that the RP-Germany Tax Treaty does not prescribe a specific form for the certificate authenticating the public document.

Respondent asserts that in conformity with Section 25, Rule 132 of the Rules of Court on attestations, the TRC is certified by the competent authorities of the Tax Office of Munich as a true copy of the original. It is notarized by a notary public in Munich, and bears an authentic embossed official seal as certified by the President Regional Court of Munich.

Moreover, respondent points out that petitioner failed to timely object to the admission of the TRC in its Formal Offer Evidence, which the Court later admitted and considered in the assailed Decision.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is dismissed for lack of jurisdiction.

The Court En Banc has no jurisdiction

The Court *En Banc* has no jurisdiction over the present *Petition for Review* as the same was belatedly filed.

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We discuss below.

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

Sec. 3. Who may appeal; period to file petition. –

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

Records reveal that petitioner received the assailed Decision on April 30, 2024, then filed a *Motion for Reconsideration* on May 15, 2024. Thereafter, the Office of the Solicitor General (OSG) received the assailed Resolution on November 27, 2024, whereas petitioner received the same on December 4, 2024. Petitioner filed a *Motion for Extension of Time to File Petition for Review* on December 19, 2024 via accredited courier, praying for an additional 15 days from December 19, 2024, or until January 3, 2025, within which to file a petition for review.⁹

In the Minute Resolution dated January 2, 2025, the Court *En Banc* granted petitioner's *Motion for Extension of Time to File Petition for Review*, subject to the condition that the motion for extension was filed on time.

As earlier mentioned, petitioner filed the instant *Petition for Review* on January 3, 2025.

In *National Power Corporation vs. National Labor Relations Commissions, et. al.*,¹⁰ the Supreme Court held that the OSG is the principal law officer and legal defender of the Government and that service to the OSG should be the proper basis for computing the reglementary period to file an appeal, viz:

Pursuant to Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987, the **Office of the Solicitor General represents the government of the Philippines, its agencies and instrumentalities and is the "principal law officer and legal defender of**

⁹ Minute Resolution dated January 2, 2025, *Rollo*, p. 8.

¹⁰ G.R. Nos. 90933-61, May 29, 1997.

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the Government." The OSG possesses the unequivocal mandate to appear for the Government in legal proceedings. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. Under number 8 of the same section, the OSG is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."

The fact that the OSG is petitioner's counsel is unchallenged, the former having entered its appearance on September 15, 1986. The lawyer deputized and designated as "special attorney-OSG" is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer. **The OSG continues to be the principal counsel for the National Power Corporation, and as such, the Solicitor General is the party entitled to be furnished copies of orders, notices and decisions.** The deputized special attorney has no legal authority to decide whether or not an appeal should be made.

As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter. **We have likewise consistently held that the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG.** In the present controversy, only the special attorney was served with a copy of the decision of the Labor Arbiter. Since service of said decision was never made on the OSG, the period to appeal the decision to the NLRC did not commence to run. Hence, the appeal memorandum filed by the OSG on July 17, 1989 was not filed belatedly.

Although jurisprudence regarding mandatory service of orders and decision on the OSG and not merely to its deputized special attorneys, pertain to court cases involving land registration and naturalization, the same rule should be observed in cases before the Labor Arbiter and the NLRC. The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same. **As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.** (Emphasis ours)

Moreover, in the case of *Republic of the Philippines, represented by the Land Registration Authority vs. Raymundo Viaje, et. al.* (Viaje case),¹¹ it was established that the OSG exercises supervision and control over the deputized lawyers and is entitled to be furnished copies of all court orders, notices and decisions, *to wit:*

¹¹ G.R. No. 180993, January 27, 2016.

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The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts **and exercise supervision and control over such legal officers with respect to such cases.**" But it is likewise settled that the **OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding"** and the latter remains the principal counsel entitled to be **furnished copies of all court orders, notices, and decisions.** xxx" (Emphasis ours)

In the *Viaje* case, the OSG entered its appearance to the Court through the deputized lawyer from the Land Registration Authority (LRA). It also requested that it be furnished with copies of orders, notices and decisions of the Regional Trial Court (RTC) and instructed that only service to the OSG will bind the government. Moreover, in the said case, the lawyers from the LRA requested that they likewise be furnished with copies of the orders, notices and decisions. Still, the RTC only furnished copies to the OSG.

The Supreme Court also stated in the *Viaje* case that it would have been more prudent to have furnished the deputized counsel of the notices. The Supreme Court held that furnishing the deputized counsel does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case and the receipt of the deputized counsel of the copies of the Court's orders, notices and decisions will not be binding unless received by OSG.

In the instant case, even without OSG's entry of appearance and request to be served with notice, orders and decisions of the CTA, the fact remains that the OSG is still the lawyer of the government.

Despite the Memorandum of Agreement (MOA) between the OSG and the BIR, where the lawyers from the Litigation Division of the BIR were deputized by the former to appear and handle cases before the Court *En Banc*, the OSG is not stripped off of its power and duties as the lawyer of the government. The deputization of the BIR lawyers delegates the task of assisting the Solicitor General and appearing or representing the Government in cases involving their respective offices brought before the courts. Being the principal, the OSG still exercises supervision and control over such legal officers with respect to such case. Accordingly, petitioner, a government official acting in an official function, is represented both by the OSG as the principal counsel, and the Litigation Division of the BIR, as deputized counsel.

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The proper reckoning period, therefore, is from the date of receipt by the OSG of the questioned decision or resolution. Service to OSG, who continues to be the principal counsel, is service to the BIR handling lawyer, who is the deputized lawyer.

Counting from date of receipt of the assailed decision or resolutions, the motion for extension of time must be filed before the expiration of the period sought to be extended. Where a motion for extension of time is filed beyond the period for appeal, the same is of no effect since there would no longer be any period to extend, and the judgment or order to be appealed from will have become final and executory.¹² Considering that the OSG's receipt of the assailed Resolution was on November 27, 2024, petitioner had until December 12, 2024 within which to file a petition for review or a motion for extension of time to file the petition for review. Hence, petitioner's filing of the *Motion for Extension of Time to File Petition for Review* on December 19, 2024 was beyond the 15-day reglementary period and did not extend the period within which to file the petition for review. Correspondingly, present *Petition for Review* was likewise belatedly filed.

The Petition for Review lacks merit

Even assuming that the present *Petition for Review* was timely filed, the same will be denied for lack of merit.

Petitioner now assails the admissibility of the TRC arguing that the same was not authenticated by the Philippine Embassy or apostilled.

Even if We lend credence to petitioner's contention and disregard the TRC, respondent was able to sufficiently prove that it is a resident of Germany. The Court's Special Second Division found as follows:

Simply put, in order for petitioner to claim exemption from CGT under the RP-Germany Tax Treaty, petitioner has to establish the following:

- (1) It is a resident of Germany;
- (2) There is an alienation of shares of a domestic corporation; and,
- (3) The assets of the domestic corporation do not principally consist of immovable property in the Philippines.

Petitioner presented in evidence a certified true copy of its Consularized Articles of Association (AOI) and the corresponding English version thereof to show that it is a stock corporation duly organized and existing under the laws of Germany and that its registered offices are located in Berlin and Munich. Petitioner also proffered a Certificate issued by the Tax Office of Munich, showing that it is a tax resident in Germany. In

¹² *Vda. de Victoria vs. Court of Appeals, et al.*, G.R. No. 147550, January 26, 2005 (Decision).

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addition, petitioner submitted the Philippine Securities and Exchange Commission (SEC)-issued Certificate of Non-Registration as of 25 June 2021 to prove that it is not registered either as a corporation or as a partnership in the Philippines. Thus, the *first condition* was satisfied.
(Underscoring supplied; citations omitted)

The TRC is, at best, corroborative evidence that strengthens respondent's residence, without which, the outcome will remain unchanged.

All told, the *Petition for Review* having been filed beyond the reglementary period, the Court *En Banc* lacks jurisdiction; thus, it has no other power than to dismiss the present case.

ACCORDINGLY, the instant **Petition for Review** is **DISMISSED** for lack of jurisdiction. The Decision dated April 24, 2024 and Resolution dated November 12, 2024 in CTA Case No. 10797 are hereby **AFFIRMED**.

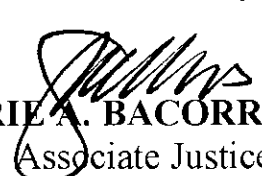
SO ORDERED.

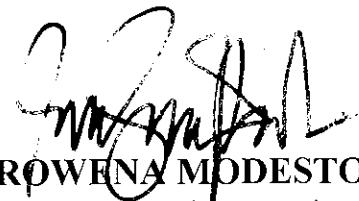

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:



MA. BELEN M. RINGPIS-LIBAN
Presiding Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

DECISION

CTA EB No. 3045 (CTA Case No. 10797)

Commissioner of Internal Revenue vs. Siemens Aktiengesellschaft

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MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


HENRY S. ANGELES
Associate Justice


PAOLO S. TESTON
Associate Justice


DEBBIE JEAN I. CENTENO-DIJAMCO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice